

# EXHIBIT I

THE ARBITRATION TRIBUNALS OF THE AMERICAN  
ARBITRATION ASSOCIATION

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In the Matter of Arbitration between  
SPENCER MEYER,

Claimant,

Les Weinstein

-against- AAANo. 01-18-0002-1956

Uber Technologies, INC.,

Respondent.

- - - - - x

October 25, 2019

9:00 a.m.

BOIES SCHILLER FLEXNER LLP

55 Hudson Yards

New York, New York 10001

B E F O R E:

LES WEINSTEIN, The Arbitrator

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APPEARANCES:

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ALSO PRESENT:

KALEIGH WOOD, Paralegal  
ERIC LIPMAN, ESQUIRE, Uber

1 D. Carlton - Direct

2 the testimony from Ms. Kennington you  
3 reviewed before this hearing happened and  
4 gave a short report about.

5 Now, we are disputing in this  
6 arbitration whether Ms. Kennington's  
7 testimony is worth any weight whatsoever, but  
8 let's go ahead and assume its given some  
9 weight. Ms. Kennington states that drivers  
10 generally recorded that they earn more money  
11 on a surged ride, although some drivers  
12 reported they did not get as many riders as  
13 they wanted during a surge.

14 From a point of view of an  
15 economist, if we accept that statement as  
16 true, is there any consequence to it?

17 A. No. I think the statement is true  
18 and I think the statement makes the point  
19 that surge pricing is designed to increase  
20 supply and lower waiting time, so the fact  
21 that a driver makes more money in surge,  
22 that's the whole point in surge, raise the  
23 price to get drivers, so if they get the  
24 business, they make more money, that's the  
25 point of surge.

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2 we started. The major arguments and the  
3 crux of this case is the very same thing we  
4 were arguing before Judge Rakoff, Mr.  
5 Isaacson and I, in March of 2016. And I  
6 think after all of this, if you clear  
7 all the evidence away and you see  
8 through to the facts as everyone admits  
9 they are, you will see this turns on  
10 whether Judge Rakoff got it right. And we  
11 submit he did, and you should follow his  
12 decision.

13 Very quickly, just a blast from the  
14 past. This case was about unhealthy oil  
15 markets. They were failing so badly that  
16 wells were being abandoned. If you read  
17 through this very dense case, which I did  
18 again last night, there were price wars,  
19 distressed gasoline was flying onto the  
20 market, businesses were going out of  
21 business because they couldn't organize  
22 price and the government did not  
23 immunize them, didn't step in far  
24 enough. The government agencies were  
25 encouraging the price fixing that

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MR. FELDMAN: Then I can flip through all of this and get straight to Leegin and Interstate Circuit. I have a lot here.

Because the points are, yes, rides could be sold and there is evidence on that, obviously, but the matches could be made, right. We heard testimony that the batch matching works without surge pricing and there are lots of alternatives that we maybe spent too much time going through. But there are a lot of alternatives, including Uber selling the rides itself, which were not possible as an alternative in BMI.

So I will flip through many, many slides and I can come back to them if it comes up later. But BMI is not going to be proven in this particular case.

So where does that leave us. That leaves us where we began this case back in front of Judge Rakoff in March of 2016, whether it's horizontal. Uber's arguments haven't changed and I want to

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show you that the way they're making the argument now is the same as the way they were making the argument before and that the deciding -- the dispositive legal points haven't changed either.

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So here is the argument they made before. It was Mr. Isaacson and I back then as well. And we have the oral argument transcript in the binders that Boies Schiller has prepared for you so you can see this for yourself. The argument is that if you accept this is a horizontal conspiracy, then you have a conspiracy of hundreds of thousands of people who have never met each other, sprawled across the nation, all of whom are jointly and severally liable and that simply cannot be the case. You heard the same argument here on day one and we need factual evidence that all of these millions of drivers are somehow collaborating with each other, and if you accept our theory, then every driver in Uber in America is jointly and

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severally liable for all the damage that's caused by the app or the surge pricing. And I will put on the record we are not going after Uber drivers.

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But those were the arguments that Judge Rakoff rejected. They were not the only arguments he rejected, but they were one of them. Judge Rakoff rejected this, explaining the capacity to orchestrate such an agreement was the genius of Mr. Kalanick and his company, which through the magic of smart phone technology can invite hundreds of thousands of drivers from far flung locations to agree to Uber's terms, which is his recitation of our complaint, to be fair. And then he explained that Uber's digitally decentralized nature, his words not mine, does to the prevent the app from constituting a marketplace through which Uber organized a horizontal conspiracy among drivers. And the advancement of technological means need not leave



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2 antitrust law behind.

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4 So what else was argued? And this is  
probably the more significant argument.

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6 There was a debate at the time over  
whether this was a Leegin case or this  
7 was an Interstate Circuit case, which is  
8 the same debate I think we are having  
9 here today as well.

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11 ARBITRATOR WEINSTEIN: Except one  
is the 20th century, one is the 21st  
12 century. When I was a young lawyer I  
13 was citing Interstate.

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15 MR. FELDMAN: We will talk about  
the cases that continue to cite  
16 Interstate Circuit, not just Judge  
17 Rakoff, but United States versus Apple  
18 is centered around Interstate Circuit,  
19 the Toys R Us case we talked about today  
20 as well. The same arguments are made  
21 that Leegin should apply rather than  
22 Interstate Circuit. And Mr. Isaacson had  
23 argued that what we are trying to do by  
24 saying this is one conspiracy is avoid  
25 the line of cases with Leegin that say,

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no look vertical relationships

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properly done are innocent behavior.

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This was, if you look at the

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transcript, this was the main front of

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the battle for both sides before Judge

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Rakoff and we won that battle. We said,

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no, recent jurisprudence on vertical

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resale price maintenance agreements does

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not, as defendants would have it, as

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defendant would have it, undermine

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plaintiff's claim of an illegal

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horizontal agreement.

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That here, unlike in Leegin, Uber

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is not selling anything to drivers that

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is then resold to riders. Moreover, the

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justifications for rule of reason

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treatment of resale price maintenance

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agreements offered in Leegin are not

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directly applicable.

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You heard Dr. Carlton tell you

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today about the free rider problem and

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that he made an argument in the Toys

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R Us case but he didn't make a similar

argument here.

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So I will explain in more detail  
why I think Judge Rakoff got it right  
but --

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ARBITRATOR WEINSTEIN: It was at  
the pleading stage.

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MR. FELDMAN: It was at the  
pleading stage. It did not decide the  
case.

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ARBITRATOR WEINSTEIN: It's not law  
of the case and it's not preclusive,  
it's not issue preclusive. It never  
became final. There was no right to  
appeal.

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MR. FELDMAN: Let me address  
finality. So finality for issue  
preclusion purposes is not what it seems  
to be.

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ARBITRATOR WEINSTEIN: I read your  
brief and I have my doubts but I will  
see more of that later on. They have  
not had a chance yet to respond to that  
so let us not do it twice before they  
have one chance to answer it.

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MR. FELDMAN: I will argue it

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later, whenever you like.

ARBITRATOR WEINSTEIN: I'm assuming -- certainly they will brief it. They didn't know it was coming because they think it doesn't apply so they didn't preemptively discuss it. So let's move on.

MR. FELDMAN: Sure. So why doesn't Interstate Circuit apply in the first place. If you go back to Interstate Circuit and look at what the government argued and what the Supreme Court decided, it's very much the situation we have here. What Dr. Carlton called that conditionality. The government argued that each distributor in that case, these were the major movie distributors who were invited by a big theatre company in Texas to agree to certain terms, 25 cent tickets and no second runs. The government argued there that each distributor would benefit by unanimous action where otherwise the restrictions would probably injure the distributors

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2           who impose them, right. Meaning tying  
3           yourself like Ulysses to the mast to a  
4           restraint-- that only succeeds if  
5           everybody else ties themselves to the mast.  
6       It doesn't make any sense unless you know  
7           that everyone else is not going to  
8           compete against you.

9                     Interestingly, and we can get to  
10           this too, later Justice Jackson who was  
11           a solicitor general who argued  
12           Interstate Circuit and who is also on  
13           the brief, in his brief he argued that  
14           even if the evidence before the court  
15           failed to show an agreement amongst the  
16           distributors, their common agreement  
17           with Interstate Circuit made them  
18           parties to the conspiracy. That it was  
19           immaterial that the several distributors  
20           may have taken the step without a prior  
21           understanding or agreement with each  
22           other as to concert of action. And the  
23           Supreme Court agreed. The Supreme Court  
24           said an agreement was not a prerequisite,  
25           meaning that actual communication among

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2 the rim was not a prerequisite. If you  
3 could get to that same place of having a  
4 rim where they each, knowing that  
5 concerted action was contemplated and  
6 invited, gave their adherence to the  
7 scheme and participated in it. Each was  
8 advised that the others were asked to  
9 participate just like an Uber driver  
10 partner knew that every other driver  
11 partner has that same agreement. It's  
12 online for the world to see. Each knew  
13 that cooperation was essential to the  
14 successful operation of the plan,  
15 meaning if somebody else could charge  
16 their own fare and not surge a rider,  
17 they would get the rider over you and  
18 they knew the plan, if carried out,  
19 would result in a restraint and knowing  
20 all that, they participated.

21 I will show you this diagram we  
22 have, courtesy of Uber. Uber invited --  
23 this was the diagram that Uber used to  
24 make the point that this wasn't  
25 Interstate Circuit. But this diagram is

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2 Interstate Circuit. You have Uber in  
3 the middle, you have millions of drivers  
4 all having agreements with Uber. The  
5 reason there is a rim on this conspiracy  
6 is that the drivers would not agree to  
7 surge unless all drivers were bound  
8 to surge pricing. It only works with  
9 unanimous uniform raising of prices,  
10 which is the argument we made to Judge  
11 Rakoff as well.

12 How is that Interstate Circuit? We  
13 substituted little car icons for little  
14 movie picture icons and now we have  
15 Interstate Circuit, same diagram  
16 otherwise. What did Interstate Circuit  
17 do? They were in the middle and invited  
18 all these distributors to limit first  
19 run movies.

20 ARBITRATOR WEINSTEIN: It wasn't a  
21 price restraint.

22 MR. FELDMAN: It wasn't a price  
23 restraint, our case is easier in that  
24 way, but it was a per se restraint and  
25 it also worked only because there was

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available to us here which we are very appreciative of, but if Uber is going to make an argument about its finances and what it can afford to do and what it can't afford to do it has access to all those witnesses it didn't put it in.

ARBITRATOR WEINSTEIN: I'm just asking you, you are asking, for the purpose of our being here with all of these people is, you think I have the power under the evidence you presented to enjoin surge pricing nationwide?

MR. FELDMAN: We do.

ARBITRATOR WEINSTEIN: Do you know of a single case in which an individual in an antitrust case got a nationwide injunction?

MR. FELDMAN: So I could find you some and I would be happy to submit them in post hearing briefing.

ARBITRATOR WEINSTEIN: I would think -- if the answer is you think there is, cite it to me. I know of none.



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three days you've spent with us, for the work you've done before that, the work we will be asking you to do from this point forward. We asked you for a reasoned award because we believe strongly that there should be a declaration that a company that does something like this is to be lauded under the antitrust laws and not condemned because otherwise the antitrust laws are taking a very dangerous turn and going down a very dark alley. All of us who worked hard on this appreciate all the hard work you are doing.

ARBITRATOR WEINSTEIN: I want to say on both sides, the writing has been as good as I have seen, and I have seen a lot of writing. It's been excellent. I want to say to you Mr. Meyer, not -- Mr. Feldman, not only do you have the burden of proof, you have the burden of persuasion. If you think you can distinguish Leegin and you want to brief it, I haven't read Leegin recently but

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2 if you want to brief it, I will give you  
3 the opportunity but I think that's where  
4 your case rests: Distinguishing Leegin.

5 Most of the cases we talk about are  
6 cases decided before the internet  
7 existed, before this digital age was  
8 upon us which has changed a lot of  
9 stuff.

10 I must say I act out of fear. My  
11 fear is if I ruled Uber illegal, I would  
12 need security. I wouldn't be able to  
13 walk the streets at night. People would  
14 be after me.

15 So I want to thank you for your  
16 hospitality.

17 Do you want to brief it.

18 MR. FELDMAN: Of course, yes.

19 ARBITRATOR WEINSTEIN: How much  
20 time do you want to brief it?

21 MR. FELDMAN: I'm not sure. I  
22 would like to talk to Mr. Isaacson.

23 ARBITRATOR WEINSTEIN: You can  
24 brief whatever you want to brief but I  
25 have a good handle on all the arguments